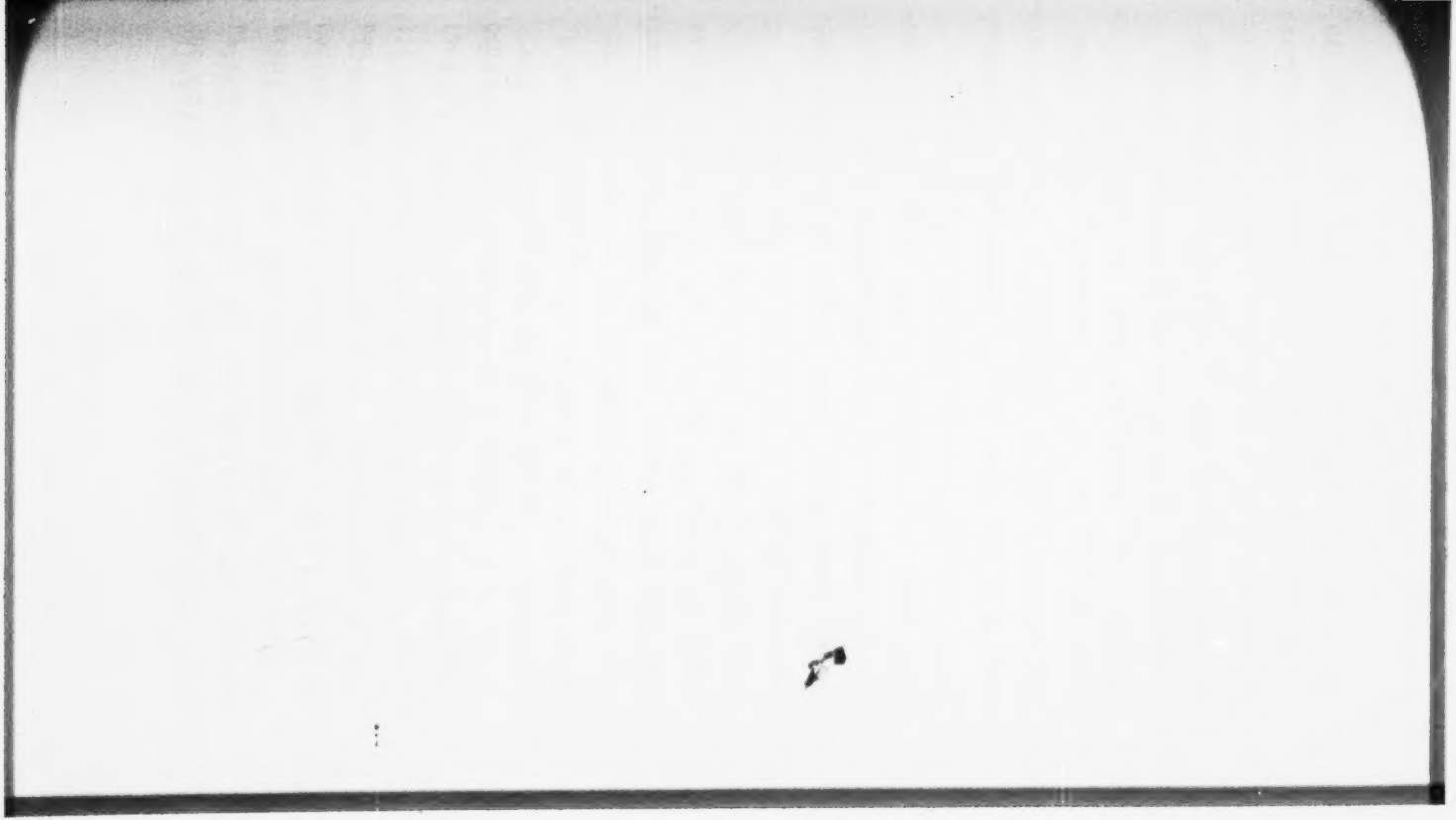

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Supreme Court, U. S.
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No. 72-80

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

DALLAS T. HELTSLEY and CHARLES SCHMIDT,
Petitioners

v.

DISTRICT NO. 23, UNITED MINEWORKERS OF AMERICA and GIBRALTAR COAL CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of Kentucky

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BRIEF FOR GIBRALTAR COAL CORPORATION IN OPPOSITION

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OPINIONS BELOW

The orders of the Muhlenberg (Kentucky) Circuit Court are unreported. The modified opinion of the Court of Appeals of Kentucky is reported at 477 S.W. 2d 134.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether the Court of Appeals of Kentucky properly affirmed the dismissal of a Complaint where Plaintiffs, despite three opportunities to amend, failed to frame a complaint containing allegations sufficient to deny an Umpire's award, pursuant to a collective bargaining agreement, the binding effect accorded it under federal law.

STATUTE INVOLVED

The pertinent provision of Section 301 of the National Labor Relations Act, as amended (29 U.S.C. § 185(a)), is set forth as follows:

> "§ 185. Suits by and against labor organizations—Venue, amount, and citizenship
>
> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE

Since 1966, this case has, in one form or another, been scrutinized, on ten separate occasions, either privately (through grievance procedures established under a collective bargaining agreement), administratively or judically, as follows: once by the Regional Director and twice by the General Counsel of the National Labor Re-

lations Board; once by an umpire; four times by the Muhlenberg (Kentucky) Circuit Court; and twice by a unanimous Court of Appeals of Kentucky (hereinafter referred to as the "court below"). On each such occasion the issues raised by the Petitioners were decided against them; it is the latest in this long series of adverse rulings—affirmance by the court below, on petition for rehearing, of the dismissal of Petitioners' Third Amended Complaint—from which the Petitioners seek review by this Court.

The Petitioners (two of the three original Plaintiffs) were employees of Gibraltar Coal Corporation ("Gibraltar") and members of Local Union No. 1092, a local affiliate of District No. 23, United Mine Workers of America. Gibraltar was a party to a collective bargaining agreement ("Agreement") with District No. 23 ("Union").

Petitioners, members of the "Mine Committee",[1] were discharged by Gibraltar on November 10, 1966 after they participated in a work stoppage and picketing which "were in breach of a 'no strike' collective bargaining agreement." (Opinion of court below, Petitioners' Appendix, p. 4a).[2]

Following the rejection of Petitioners' charges of unlawful discharge by the Regional Director of the NLRB (and the subsequent affirmation of that decision on two occasions by the General Counsel of the NLRB), the Petitioners' discharges were considered pursuant to the full grievance procedure established under the Agreement. When the fourth step of that procedure

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[1] See Opinion of the court below, Petitioners' Appendix, p. 2a.

[2] The suggestion of blacklisting throughout the coal industry, improperly proffered to this Court in Footnote 1 of the Petition (pp. 4-5), is completely outside the record.

was reached and the Joint Board of Arbitrators was unable to agree, the grievance was referred to an umpire ("Umpire") for a "final" determination as provided in step five of the grievance procedure. The transcript of "extensive evidence" was considered by the Umpire, who, in a written opinion dated March 24, 1967, denied the grievance and sustained the discharges. (Opinion of the court below, Petitioners' Appendix, p. 4a).

Dissatisfied with the determinations of the Regional Director and General Counsel of the NLRB and with the outcome of the arbitration, the Petitioners commenced, in the Muhlenberg Circuit Court, an action against Gibraltar and the Union seeking reinstatement and damages, attacking the award of the Umpire and seeking to deny that award the binding effect accorded it under the collective bargaining agreement. The separate motions of Gibraltar and the Union to dismiss the Complaint, the Amended Complaint, the Second Amended Complaint and the Third Amended Complaint were all granted, the latter being dismissed with prejudice.

Petitioners thereafter appealed the dismissal of the Third Amended Complaint to the court below which, in a written opinion, unanimously affirmed.

Subsequently, on December 10, 1971, the Petitioners filed a petition for rehearing. In unanimously "overruling" that petition, the court below modified its written opinion to address itself to the assertion, raised for the first time in the Petition for Rehearing, that the decision of the court below is inconsistent with cases previously decided by this Court.[3]

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[3] See Opinion of the court below, Petitioners' Appendix, pp. 10a-11a.

ARGUMENT

I. THIS CASE DOES NOT PRESENT A SUBSTANTIAL QUESTION WHICH WARRANTS REVIEW BY THIS COURT.

A. Petitioners Have Misstated the Holding of the Court Below.

Petitioners assert that the decision of the court below is inconsistent with the "spirit" of the decisions of this Court in *Conley* v. *Gibson,* 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957) and *Czosek* v. *O'Mara,* 397 U.S. 25, 90 S. Ct. 770, 25 L. Ed. 2d 21 (1970). Specifically, Petitioners assert that, in a cause of action for breach of the duty of fair representation, the court below violated *Conley* and *Czosek* by the invocation of state procedural rules which are allegedly more strict than those applied in federal court.[4] Petitioners' description of the holding of the court below is inaccurate[5] and ignores completely the actual grounds upon which that court relied in affirming and reaffirming the dismissal of the Third Amended Complaint.[6]

The court below correctly held that the validity of Petitioners' claim must be determined on the basis of the whole record, which included the Umpire's opinion and award, attached to Petitioners' Third Amended Complaint. The court below concluded that Petition-

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[4] Petitioners do not appear to contend that the express provisions of the Kentucky Rules are in conflict, in any material respect, with the Federal Rules of Civil Procedure.

[5] The court below regarded itself as bound by federal law. Citing *Teamsters Local 174* v. *Lucas Flour Company,* 369 U.S. 95 (1962), it expressly recognized that it was required to follow federal law. (Opinion of the court below, Petitioners' Appendix, p. 8a.)

[6] See, for example, the opinion of the court below, Petitioners' Appendix, p. 9a, where the court stated, "We are not inclined to explore how specifically the pleader must frame his complaint under the 'particularity' requirement of CR 9 so far as averments relating to fraud are concerned."

ers' complaint failed to contain allegations "sufficient to warrant judicial examination of the award that resulted from arbitration." (Opinion of the court below, Petitioners' Appendix, pp. 8a-9a).[7]

B. The Court Below Correctly Applied the Principles of Federal Law as Enunciated by the Supreme Court of the United States.

As previously announced by this Court in *Czosek*, complaints in fair representation cases "should be construed to avoid dismissals." (*Czosek*, 397 U.S. 25, 27). It is evident that the court below fulfilled this requirement of federal law. That every inference favorable to the plaintiff was made by the court below in assessing the sufficiency of the complaint, in compliance with this Court's injunction in *Czosek*, is evident from its finding that "the contents of the complaint as

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[7] The court below, far from acting contrary to *Conley*, applied the very principles enunciated by that case, as its opinion indicated. In *Conley*, as in *Czosek*, the complaint alleged that the unfair representation consisted of the union's total refusal to press the employees' grievances before National Railroad Adjustment Board, as provided in the Railway Labor Act. In the case at bar the grievance was processed completely through the arbitration route provided in the Agreement. The legal insufficiency of the "conclusory" (see Petition, p. 10) verbalization claimed by Petitioners to be adequate, is not only inherent in *Czosek* and *Conley*, but is required under federal law, as announced in the *Steelworkers* trilogy, where, as here, an attempt is made to have the court overturn what otherwise would be a final and binding award by arbitration.

Thomas v. *Consolidation Coal Co.*, 380 F.2d 69 (CA 4, 1967), *cert. den.*, 389 U.S. 1004 (1968) (Petitioners' Appendix, pp. 10-11) referred to by Petitioner was cited by the court below (Petitioners' Appendix, p. 9a), by way of pointing out that in *Thomas*, as here, an arbitration proceeding had been held, whereas in *Conley* there had been a refusal by the union to take the employees' grievance to arbitration.

amended *with the inferences to be drawn from them,* on the whole record will not support their claim for relief" (emphasis supplied). (p. 9a). The Petition, in its reference to *Czosek,*[8] fails to refer to the Court's direction therein that in the final determination of whether a complaint should be dismissed, a significant element is the extent to which the plaintiff has been "given the opportunity to file supplemental pleadings unless it appears 'beyond doubt' that he cannot state a good cause of action." (*Czosek,* at p. 27).

In this case, Petitioners were given three opportunities to amend their original complaint. In each instance, they failed to raise their allegations or "the inferences to be drawn from them" to a level which could withstand a motion to dismiss. There is nothing in any decision of this Court which requires a trial court to permit the amendment of pleadings *ad infinitum* in order to meet the standards of *Czosek;* in the instant case, Petitioners declined to seek further amendment, rejecting any additional opportunity for allegations less conclusory than naked avowal. We respectfully submit that the court below properly determined that, in granting three opportunities to amend pleadings, the trial court indulged Petitioners' conclusory allegations to the point where it was apparent that they could not state a good cause of action.

It is the well established policy of this Court that arbitration is the desirable method for settlement of

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[8] While Petitioners did not rely on *Czosek,* either in their brief to the court below or in their Petition for Rehearing, it is obvious that in reaching its decision, the court below was well aware of, and applied, the standards of *Czosek.* Petitioners cannot properly contend that the court below refused to follow *Czosek;* their disagreement is with the court's application of *Czosek* to their pleadings.

grievance disputes and that courts should not generally review the merits of an arbitrator's award. See Section 203(d) of the Labor Management Relations Act [29 U.S.C. § 173(d)]; *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960); and *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960). In order for Petitioners to avail themselves of the equally well-established principle that courts will not give binding effect to an arbitration award in the face of a showing of the breach, by the involved union, of the duty of fair representation (See *Humphrey* v. *Moore*, 375 U.S. 335, 84 S. Ct. 363, 11 L. Ed. 2d 370 (1964); *Vaca* v. *Sipes*, 386 U.S. 171 (1967); *Harris* v. *Chemical Leaman Tank Lines, Inc.*, 437 F. 2d 167 (5th Cir. 1971) and cases cited therein, and *Thomas* v. *Consolidation Coal Co.*, 380 F. 2d 69 (4th Cir., 1967) *cert. den.* 389 U.S. 1004 (1968)), their pleadings must contain more than conclusory characterizations. Petitioners have not met this requirement; hence, no substantial question is presented for review by this Court.[9]

[9] What is evident from United States District Court opinions, some of which were referred to by Petitioner (Petition, pp. 13-14, is that the doctrine that breach of duty complaints should be liberally construed is well understood in the lower courts, including the court below, as appears from its opinion.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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August 11, 1972